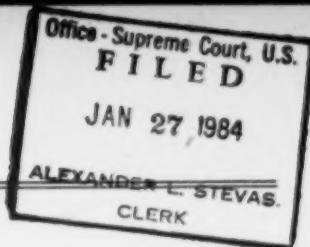


83-1256



No.

**In The
Supreme Court of the United States**

OCTOBER TERM: 1983

G. Harold KING, Jr., Appellant

Petitioner

v.

CHARLES N. MALONE, Trustee

Appellee
Defendant

**On Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit**

**Petition of
G. HAROLD KING, JR.
Petitioner-Appellant,
for a Writ of Certiorari**

Respectfully submitted
BY ATTORNEY
FRANZ JOSEPH BADDOCK
P.O. Box 3573
Baton Rouge, Louisiana
70821
(Tel.: (504) 343-9194)

THE QUESTIONS PRESENTED FOR REVIEW

(1) Can a bankruptcy court circumvent 11 U.S.C. 327 (a), the purpose of which is amplified by Bankruptcy Rules 2013 and 2014, and saddle the Estate with *large unnecessary costs*, in a case where Appellant was denied jury trial or any trial, of the involuntary petition filed against him and where such costs could have been avoided in the absence of bankruptcy?

(2) Can such court foster additional large expenses on the Estate under 11 U.S.C. 503 and 11 U.S.C. 506 (b), which also could have been avoided without resort to bankruptcy?

(3) When a United States District Court, sitting as an appellate court under Sec. 405 (c) (1) (C) of Public Law 95-598, determines a bankruptcy appeal without hearing or transcript, can it be said that Appellant has been afforded proper review under the cited provision and *Matter of Perimeter Park Investment Associates, Ltd.* (CA 5th 1980) 616 F.2d 150, 151 ?

(4) Are the "equitable principles" governing bankruptcy, established by this Court in a line of landmark cases cited herein, still applicable under the Bankruptcy Code, or have these principles been abrogated by the enactment thereof?

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TABLE OF AUTHORITIES

Northern Pipeline Cost. Co. V. Marathon Pipe Line Co.,
("Marathon"), 102 S. Ct 2858, 6 C.B.C. 2d 785 (1982)

Bank of Marin v. England (1966) 385 U.S. 99, 87 S. Ct. 274,
17 L. Ed2d 197

Pepper v. Litton (1939) 308 U.S. 295, 60 S. Ct. 238, 84 L.
Ed. 281

S.E.C. v. United States Realty (1940) 310 U.S. 434, 60 S. Ct.
1044, 84 L. Ed. 1293

Prudence Realization Corp. v. Geist (1942) 316 U.S. 89, 62
S.Ct. 978, 86, L. Ed. 1293

Young v. Higbee (1945) 324 U.S. 204, 65 S. Ct. 594, 89 L.
Ed. 890

Continental Illinois National Bank v. Chicago Rock Island
(1935) 294 U.S. 648, 55 S. Ct. 595, 79 L. Ed. 1110

Buffum v. Peter Barceloux Co. (1932) 289 U.S. 227, 77 L.
Ed. 1140, 53 S. Ct. 539

Mosser v. Darrow (1951) 341 U.S. 267, 71 S. Ct. 680, 95 L.
Ed. 927

Pan-American Life Insurance Co. v. Menendez Rodrigues
et al (1964) 376 U.S. 779, 84 S. Ct. 1130

Aetna Insurance Co. v. Menendez (1964) 376 U.S. 781, 84
S. Ct. 1131

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(1964) 376 U.S. 780, 84 S. Ct. 1131

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U.S. 959, 100 S. Ct. 442, 621 L. Ed2d 371

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949, 100 S. Ct. 2914, 64 L. Ed2d 806

Matter of Multiponics, Inc. (CA 5th 1980) 622 F.2d 709

In the Matter of Perimeter Park Investment Associates, Ltd.
(CA 5th 1980) 616 F.2d 150

Gold v. South Side Trust Co. (CA 3rd 1910) 179 Fed. 210,
cert. den. 218 U.S. 671, 31 S. Ct. 221, 54 L. Ed. 1204

Wilson v. Stevenot (CA 9th 1957) 250 F.2d 694

Matter of Marquette Manor Building Corp. (CA 7th 1938)
97 F.2d 733, cert. den. 305 U.S. 648, 59 S. Ct. 229, 83 L. Ed.
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Donovan & Schuenke v. Sampell (CA 9th 1955) 226 F.2d
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In re United Merchants and Manufacturers, Inc. (CA 2nd
1982) 674 F.2d 134

Article III Sec. 1 of the United States Constitution

11 U.S.C. 101 (13) 11 U.S.C. 327(a)

11 U.S.C. 328 (c) 11 U.S.C. 363(m)

11 U.S.C. 503 11 U.S.C. 506(b)

Sec. 405 (c) (1) (C) of Public Law 95-598

Rule 805 of the Rules of Bankruptcy Procedure

Rules 2013 and 2014 of the Bankruptcy Rules effective
August 1, 1983

Collier on Bankruptcy, 14th Ed. V. 3A Par. 62.11(3) Pages
1457-59

(same) V. 4B Par. 70.98(15) Pages 1169-73

Collier on Bankruptcy, 15th Ed. V. 2 Par. 327.03 Page 327-
10

(same) V. 3 Par. 506.05 Page 506-33

A CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

In addition to the grounds specified in the last part of Rule 17.1.(a), jurisdiction is invoked for the primary reasons:

I

To afford this Court opportunity to declare guidelines for the proper scope of appellate review under the Bankruptcy Code, and determine whether a *no hearing-no transcript* Appeal is sufficient.

II

To afford this Court, through the facts of this case, additional justification for its decision in *Marathon*, *supra*, and illustration of the dangers in entrusting drastic power under the Bankruptcy Code, to NON-Article III Tribunals.

III

To afford this Court additional opportunities to declare guidelines for the United States Congress that seems to be having considerable difficulty in enacting remedies mandated by *Marathon*, *supra*.

To the extent that any declarations by this Court may enable Congress to prevent further abuses under the Bankruptcy Code, this petition will have served a most useful purpose.

IV

Most important of all, to afford this court opportunity to declare whether the "equitable principles" governing bankruptcy, established by this Court in a line of landmark cases, are still applicable under the Bankruptcy Code—in particular reference to whether the *large unnecessary disbursements* herein accord with those principles.

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED-BASIS FOR FEDERAL JURISDICTION

This case involves Article III Sec. 1 of the Constitution of the United States. Reliance is had on 28 U.S.C. 2101(c) and Rule 20 sub-sections .2. and .4. of this Court as the basis for Federal Jurisdiction.

The primary statutes involved are 11 U.S.C. 327(a), 11 U.S.C.328(c), 11 U.S.C. 503, 11 U.S.C. 506(b), and Sec. 405(c) (1) (C) of Public Law 95-598.

Other statutes involved are 11 U.S.C. 101(13) and 11 U.S.C. 363(m).

A CONCISE STATEMENT OF THE CASE

Statement of the case has been made in *King v. Fidelity National Bank* (CA 5th 1983) 712 F.2d 188, 189, which matter is presently before this Court in Docket No. 83-1114, and in unpublished opinion of the United States Court of Appeals for the Fifth Circuit, No. 83-3344 Summary Calendar—which latter opinion appears as item No. 2 in the Appendix separately presented under Rule 21(k).

As appears from the foregoing, an involuntary petition under 11 U.S.C. 303 was filed by the Fidelity National Bank against Petitioner King and his wife. On appeal to the Fifth Circuit, the wife was ordered dismissed from the proceeding.

During pendency of the appeal, the Trustee filed an application with the bankruptcy court to sell *at private sale* a 15.75 acre tract of land with improvements, belonging to Petitioner King and his wife, in Livingston Parish, Louisiana, which area can be considered part of the metropolitan area of Baton Rouge, Louisiana. (See: item 9 of the separate Appendix)

As more fully appears from said application, said sale was not to be at public auction to the highest bidder, but rather to one individual for the sum of \$356,383.00, with a

6% commission (or \$21,383.00) to be paid to a realtor at time of sale. Although predicated on the belief "that the price offered therefore is the best one available", **NO APPRAISAL OF THE PROPERTY** was submitted.

Trustee's application was dated April 15, 1982 and filed April 16, 1982. This appears the *only* application re this property to the bankruptcy court. **NO NEWSPAPER ADVERTISEMENT HAD BEEN MAKE BY TRUSTEE PRIOR THERETO.**

Following hearing on *May 13, 1982*, the bankruptcy court on May 14, 1982 authorized Trustee to sell the property *at private sale* to a designated individual for the sum of \$356,383.00 with payment of a 6% realtor's commission (or \$21,383.00) at time of sale. (Item 8-Appendix)

On *May 21, 1982* the court issued a supplemental order (No. 7-Appendix) reaffirming a reservation to Citizens Savings & Loan Association to claim attorney's fees, and relegating such rights to the proceeds of sale, *irrespective of the fact that said Association had neither sought foreclosure nor placed its claim in the hands of the Association's law firm, prior to the filing of the involuntary petition.*

On appeal of these orders to the United States District Court for the Middle District of Louisiana, the court allowed neither hearing nor oral argument on appeal. The court's reasons for judgment affirming actions of the bankruptcy court are dated *March 29, 1983* and appear as item 6 of the Appendix. The judgment of the court is dated *March 30, 1983* (Item 5-Appendix) while its Minute Entry denying amendment or reconsideration is dated *May 11, 1983* (Item 3). *Apparently the District Court disposed of the appeal and request for amendment or reconsideration without benefit of the Transcript of the May 13, 1982 hearing in the bankruptcy court.* Reference to the caption sheet of this hearing shows that it was not filed in the

District Court *until June 23, 1983!* (See: item 10 of appendix)

On Appeal to the United States Court of Appeals for the Fifth Circuit, that court affirmed in an unpublished opinion (No. 2 of Appendix) and again, in an unpublished opinion, denied rehearing on November 4, 1983. (See: item 1 of Appendix)

This application for Certiorari followed.

A DIRECT AND CONCISE ARGUMENT

Bankruptcy Rule 2014(a) provides:

"(a) APPLICATION FOR AND ORDER OF EMPLOYMENT. An order approving the employment of....auctioneers, agents, or other professional persons pursuant to Sec. 327...of the Code *shall be make ONLY on application of the trustee....*, stating the specific facts showing the *NECESSITY* for the employment, the name of the person to be employed, the reasons for his selection....and, to the best of the applicant's knowledge, *all of the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants.*" (Caps and italics ours for emphasis)

The Advisory Committee noted under the companion rule 2013 that:

"A basic purpose of the rule is to prevent what Congress defined as "cronyism."

Obviously, Rule 2014(a) was not complied with herein. Pretermittting the technicality that Trustee's application pre-dated its effective date (Apx-item 9), 11 U.S.C. 327(a) was applicable, which provides:

"(a) Except as otherwise provided in this section, the trustee, with the court's approval may employ one or more....appraisers, auctioneers, or other professional persons, *that do not hold or represent an interest adverse to the estate, AND that are disintereseted....*" (Caps and italics ours for emphasis)

In commenting on this section, COLLIER (15th Ed. V. 2 Par. 327.03 at page 327-10) states:

"Under section 327(a), the trustee may employ only professional persons who are "disinterested" persons. *This effects a change from prior law.*

* * * * *

"Section 327(a) assimilates the employment of attorneys, accountants *and other professional persons* in cases under the Code. *The premise of this change is that the same standards for determining "disinterestedness" as well as the qualifications AND THE NEED for professional services should be applied with respect to...other professionals as are now applicable to attorneys and appraisers.*" (Caps and Italics ours for emphasis)

A similar observation is made at page 327-8:

"Under section 327(a), the trustee may employ only professional persons that do not have or represent an interest adverse to the estate."

Strangely enough, although Trustee's application sought authorization to sell at private sale to the designated purchaser "or to any other purchaser who may offer a substantially higher price" (Apx-item 9 Par. 5), *the order of court authorized Trustee to sell ONLY to the designated purchaser!* (See item 8 of Appendix) Can a realtor be disinterested when his \$21,383.00 commission is authorized ONLY to a designated purchaser at private sale? (See: Apx-item 8)

As long ago as 1910, the landmark case of *Gold v. South Side Trust Co.* (CA 3rd 1910) 179 Fed. 210, 211-212, cert. den. 218 U.S. 671, 31 S. Ct. 221, 54 L. Ed. 1204, declared:

"A bankrupt's property is always for sale, and so far as the estate is concerned, *the services of an agent ordinarily are in no way required, and the law designates the agent who shall make the sale, namely the trustee of the estate....*

* * * * *

"In this case it is difficult to see how the bankruptcy court would have authorized the commission claimed.

* * * * *

Any commission authorized would have to be paid out of the purchase money....or, if not, out of the general estate, an even greater injury to the unsecured creditors." (Italics ours for emphasis)

Does this Court believe that the Trustee showed necessity for a realtor, WHEN NOT A SINGLE NEWSPAPER ADVERTISEMENT RE THIS PROPERTY was made by Trustee at any time prior to the filing of his application, and order of court? See also: *Donovan & Schuenke v. Sampsell* (CA 9th 1955) 226 F.2d 804, 806, 810-811:

"...neither the Referee nor the Trustee could personally have acted in these premises. WHAT THESE OFFICERS COULD NOT DO THEMSELVES, THEY COULD NOT AUTHORIZE ONE OF THEIR AGENTS TO DO LEGALLY." (Caps ours for emphasis)

* * * * *

"(6)....Even if there were full disclosure, adequacy of consideration, absence of secret profit, an open judicial sale will not avail separately or in combination as a defense for such a fiduciary. THE PROHIBITION IS ABSOLUTE IN THE PUBLIC INTEREST. IT IS ESTABLISHED TO PROTECT THE COURTS THEMSELVES FROM SUSPICION OF CHICANERY." (Caps and italics ours)

Most important of all is the observation from *Mosser v. Darrow*, supra, 71 S. Ct. 680, 684

"(6) In fairness to the trustee, it is to be noted that there is no hint or proof that he has been corrupt or that he has any interest, present or future, in the profits he has permitted these employees to make. For all that appears, he was simply misled into thinking these

persons indispensable, but he entered into an arrangement which courts cannot sanction unless they are to open the door to practices which would demoralize trusteeships and discredit bankruptcy administration." (Italics ours for emphasis)

The decision herein appears impossible of being reconciled either with the forgoing, or the cardinal equitable principles enunciated by this Court. If, for example, the Trustee had had a broker's license and had received all or part of the realtor's commission, would not the *net end effect* be the same to the estate as the expenditure of the \$21,383.00 commission to a third party? If, for example, the bankruptcy judge had had a realtor's license and had directed the \$21,383.00 to be paid to him, would not the *net end effect* to the estate be the same? In the Middle District of Louisiana the bankruptcy judge *is allowed* to practice law. Why not the brokerage business? *IF*, from the rule of *Darrow* and *Sampsell*, *supra*, neither Referee nor Trustee can so what he has no right to authorize, does it not follow that *if* they have the right to authorize, they have the right to do direct?

We conclude this section in saying that the bankruptcy court condoned a blatant violation of 11 U.S.C. 327(a) in its orders appealed from. *Interestingly enough*, 11 U.S.C. 327(a) is *NOT* mentioned in (1) the Trustee's application (Apx-item 9) or (2) the bankruptcy court's order (Apx-item 8) or (3) the supplemental order (Apx-item 7) or (4) the Reasons for Judgment of the District Court (Apx-item 6) or (5) the Judgment (Apx-item 5) or (6) the District Court's Minute Entry of May 11, 1983 (Apx-item 3) or (7) the unpublished opinion of the United States Court of Appeals for the Fifth Circuit (Apx-item 2) or (8) that Court's unpublished Denial of Rehearing (Apx-item 1).

Thus, it seems safe to conclude that 11. U.S.C. 327(a) was totally ignored by all of the lower courts!

In this matter, the United States District Judge allowed neither hearing nor oral argument in support of the appeal. The same District Judge allowed neither hearing nor oral argument in support of the six (6) bankruptcy appeals that were the subject of King v. Fidelity National Bank (CA 5th 1983) 712 F.2d 188, and is the subject of Docket No. 83-1114 of this Court.

We cannot criticize the District Judge for this, for, the United States Court of Appeals for the Fifth Circuit afforded neither hearing no oral argument in support of the appeal in No. 83-3344 Summary Calendar—either on original opinion (Apx-item 2) or on rehearing (Apx-item 1)

One Salient differece, however, is that the District Court disposed of this appeal *without* the transcript of hearing of May 13, 1982, since it was filed in the District Court on June 23, 1983, (See: item 10 of Appendix) while the District Court disposed of this matter on March 29, March 30, and May 11, of 1983. (See: items 3, 4, 5, and 6 of the Appendix)

Again, our purpose is not criticism but to *implore* this Court to state guidelines for the scope of appellate review under Sec 405(c) (1) (C) of Public Law 95-598, a topic on which this Court has *not* spoken previously, and on which there is a paucity of jurisprudence. See: *In the Matter of Perimeter Park Investment Associates, Ltd.*, supra, (CA 5th 1980) 616 F.2d 150, 151.

If oral argument had been allowed by the District Court and Court of Appeals, perhaps 11 U.S.C. 327(a) would not have been ignored!

On the issue involving reservation of a claim for attorney's fees on the part of Citizens Savings & Loan Association, our purpose is not to criticize Judge Posner who was bankruptcy judge for the Middle District of Louisiana from November 16, 1961, until February 29,

1980, and who has at all times pertinent been successively appointed a "re-employed annuitant" for the disposition of matters in cases over which he had presided. Quite the contrary, for, although the Judge's law firm represents the Citizens Savings & Loan Association, *neither he nor his law firm have taken any action whatsoever to secure either the reservation for attorneys' fees or the relegation of such claim against the proceeds of sale.* Interestingly enough, *OTHER* interests excluding the Judge and his law firm have sought this reservation and relegation.

Our purpose in raising this issue is to illustrate the harsh brutality against the estate of Petitioner King if 11 U.S.C. 506(b) is to be interpreted as authorizing such reservation and relegation, *when as a matter of state law no claims for attorney fees would have been allowed since neither foreclosure nor demand was made on Mr. King prior to the filing of the involuntary petition.* Pretermittting the allowance of 11 U.S.C. 506(b) in a case wherein an entity files a *voluntary* petition under 11 U.S.C. 301, or even a *joint petition* under Sec. 302, it seems a brutal inequity to inflict a 10% penalty or \$12,586.67 on Mr. King's estate—in a case where he has been denied jury trial or any trial of the *involuntary* petition under Sec. 303, *and especially where the Association's law firm has NOT sought reservation or relegation of such calim!*

Again, this Court has not had the opportunity, previously, to state its views on the proper interpretation of 506(b) and, again there is a paucity of guidelines in the existing law. COLLIER ventures the opinion (15th Ed. V. 3 Par. 506.05 at page 506-33) that 506(b) "is not a departure from prior case law" and concludes that the section "can be said to codify pre-Code case law." In addition, COLLIER in its 1983 Supplement to Vol. 3, under Par. 506.05 at page 506-34, cites the case of *In re Roberts* 6 C.B.C.2d 892 (B. Ct. E.D.N.Y 1982) as holding that:

"To increase the debtor's burden of debt by requiring

him to pay a creditor's attorney's fees without any statutory or contractual basis is totally inconsistent with the spirit and letter of the Bankruptcy Code."

See also: *In re United Merchants and Manufacturers, Inc.*, supra, (CA 2nd 1982) 674 F.2d 134, 138 Par. (4) wherein 11 U.S.C. 506(b) is mentioned with limited discussion.

Interestingly enough, neither Trustee nor any other entity dispute force of the authorities cited herein. The basic thrust of any opposition appears to be that since we were unable to procure a stay of the order of sale, under the latter portion of RULE 805 RBP:

"...Unless an order approving a sale of property...is stayed pending appeal, the sale to a good faith holder shall not be affected by the reversal or modification of such order on appeal..."

and/or 11 U.S.C. 363(m):

"The reversal or modification on appeal of an authorization....of a sale...does not affect the validity of a sale...under such authorization to an entity that purchased....such property in good faith."

Pretermittting the question of whether the purchaser was a good-faith purchaser under 11 U.S.C. 363(m), the ready answer to such thrust is that we are NOT seeking to nullify the sale. ALL THAT WE ARE SEEKING IS (1) TO FORCE THE TRUSTEE TO RECOVER THE \$21,383.00 REALTOR'S COMMISSION AND (2) VOID THE RESERVATION OF ATTORNEYS' FEES! Unless we are afforded such rights, 11 U.S.C. 327(a) will be without meaning.

Indeed this case illustrates, together with its counterpart in No. 83-1114 of this Court, "a general plan which must be viewed as a whole with all its composite implications," *Buffum v. Peter Barceloux Co.*, supra, 53 S. Ct. 539, 541, to such a degree that this Court should

summarily VACATE the Order for Relief and DISMISS the involuntary petition against G. Harold King, Jr.!

CONCLUSION AND PRAYER

This Court has said that "...equitable principles govern the exercise of bankruptcy jurisdiction", *Bank of Marin v. England*, supra, 87 S. Ct. 274, 277 and that "courts of bankruptcy are courts of equity and exercise all equitable powers unless prohibited", *Young v. Higbee*, supra 65 S. Ct. 594, 599 and that bankruptcy courts "are essentially courts of equity, and their proceedings inherently proceedings in equity", *Continental Illinois National Bank v. Chicago Rock Island*, supra, 55 S. Ct. 595, 606, and indeed the Fifth Circuit has summed up these principles in *Matter of Multiponics, Inc.*, supra, 622 F.2d 709 at page 721:

"(19)...bankruptcy courts are courts of equity, *In re Mobile Steel Co.*, 563 F.2d at 699; *Local Loan Co. v. Hunt*, 292 U.S. 234, 240, 54 S. Ct. 695, 697, 78 L. Ed. 1232 (1934), guided by the principle of equality of distribution, *Sampsel v. Imperial Paper Corp.*, 313 U.S. 215, 61 S. Ct. 904, 85 L. Ed. 1293 (1941), but, at the same time, authorized to prevent courses of conduct otherwise fraudulent, abusive or unfair, 563 F.2d at 699; *Pepper v. Litton*, 308 U.S. at 304-05, 60 S. Ct. at 244, 84 L. Ed. at 287-88 (the equitable powers of the bankruptcy court "have been invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done"); Herzog & Zweibel, 15 Vand. L., Rev. at 85 ("the Courts will be guided by cardinal principles of equity jurisprudence to the end that injustice or unfairness is not done in the administration of the bankrupt estate.")..."

The foregoing principles were enunciated under the old Bankruptcy Act. This Court has not as yet decreed whether they are still applicable under the Bankruptcy Code. If applicable under the Code, they have been desecrated and smashed in the instant matter, for, by what principles of

equity or justice can an entity be forced into bankruptcy without jury trial or any trial then have his Estate saddled with large unnecessary costs that could have been avoided in the absence of an involuntary petition?

PETITIONER PRAYS that this Court grant the Writ of Certiorari and declare that these cherished principles are still mandated by the Bankruptcy Code.

We further pray that summary relief be afforded under the rules announced by this Court in: *Pan-American Life Insurance Co. v. Menendez Rodrigues et al* (1964) 376 U.S. 779, 84 S. Ct. 1130, *Aetna Insurance Co. v. Menendez* (1964) 376 U.S. 781, 84 S. Ct. 1131, *Standard Cigar Co. v. Tabacalera Sereriano Jorge, S. A.* (1964) 376 U.S. 780, 84 S. Ct. 1131, *First Houston Investment Corp. et al v. Wilson* (1979) 444 U.S. 959, 100 S. Ct. 442, 621 L. Ed2d 371, *Bush v. Lucas* (1980) 446 U.S. 914, 100 S. Ct. 1864, 64 L. Ed2d 268, and *Miller v. Castlewood International Corp.* (1980) 446 U.S. 949, 100 S. Ct. 2914, 64 L. Ed2d 806, and that the orders approving the realtor's commission and reserving attorney's fees be VACATED, with directions to the Trustee to recover the \$21,383.00 paid as the realtor's commission.

We further pray that insofar as this Court reaffirms that the great equitable principle enunciated in *Bank of Marin v. England* and the other cases cited supra, are still applicable under the Bankruptcy Code, that this Court grant summary relief under the procedures of *Pan-American* and the related cases, supra, and (1) VACATE the order for relief entered against Petitioner G. Harold KING, Jr., and (2) DISMISS in its entirety, the involuntary petition filed against him under 11 U.S.C. 303, and thus (3) relegate all parties to other courts of proper jurisdiction, whether Federal or State, where issues may be determined under judicial safeguards and rights of adequate review.

WE FURTHER PRAY for any and all additional

relief that this Court may deem appropriate in the circumstances.

Respectfully submitted
BY ATTORNEY

/s/ Franz Joseph Baddock

FRANZ JOSEPH BADDOCK

CERTIFICATE OF SERVICE

I certify that although Fidelity National Bank is listed as a party defendant/appellee in the caption of this matter before the United States Court of Appeals for the Fifth Circuit, that said bank has assumed the position that "the sole proper appellee is the Trustee, who controls the estate of the Debtors. 11 U.S.C. 323..." and that for this reason the sole appellee herein is CHARLES N. MALONE, Trustee.

Accordingly, I certify under Rule 28.5, that I have this date, by prepaid mail, forwarded three (3) copies of the forgoing Petition for Certiorari to Mr. CHARLES N. MALONE, Trustee, P.O. Box 3233, Baton Rouge, Louisiana 70821., and that all parties required to be served have been served under said Rule 28.5.

Nevertheless, to appraise all entities that may have interest in this matter, I further certify that I have served by prepaid mail, an information copy of the same Petition for Certiorari on Mr. DAVID S. RUBIN, Attorney, P.O. Box 2997, Baton Rouge, Louisiana 70821, Mr. MICHEAL. T. PERRY, Attorney, 5420 Corporate Blvd., Suite 302, Baton Rouge, Louisiana 70808, and on the CITIZENS SAVINGS AND LOAN ASSOCIATION, P.O. Box 1988, Baton Rouge, Louisiana 70821 - ATTN: Mr. MICHEAL A. ROY, Senior Vice President.

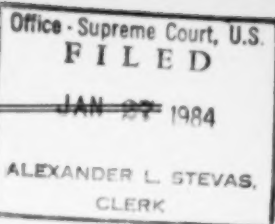
BATON ROUGE, Louisiana, this January 27 1984.

JAN 27 1984

/s/ Franz Joseph Baddock

FRANZ JOSEPH BADDOCK

83-1256



No. _____

In The
Supreme Court of the United States

OCTOBER TERM: 1983

G. Harold KING, Jr. Appellant

Petitioner

v.

CHARLES N. MALONE, Trustee

Appellee
Defendant

APPENDIX OF
G. HAROLD KING, JR.
(separately presented under Rule 21(k))

Respectfully submitted
BY ATTORNEY
FRANZ JOSEPH BADDOCK
P.O. Box 3573
Baton Rouge, Louisiana
70821
(Tel.: (504) 343-9194)

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**IN THE UNITED STATES COURT OF APPEAL
FOR THE FIFTH CIRCUIT**

**No. 83-3344
Summary Calendar**

**DO NOT
PUBLISH**

**In Re: G. HAROLD KING, JR. and
SHIRLEY G. KING**

**G. HAROLD KING, JR. AND
SHIRLEY G. KING**

Bankrupts

**Plaintiffs
Appellants**

v.

**FIDELITY NATIONAL BANK and
CHARLES N. MALONE, Trustee,**

**Defendants
Appellees.**

**Appeal from the United States Court for the
Middle District of Louisiana**

(November 4, 1983)

On Petition For Rehearing

**Before BROWN, TATE and HIGGINBOTHAM, Circuit
Judges.**

PER CURIAM:

In the petition for rehearing filed by the plaintiffs G. Harold King and Shirley G. King, the latter asserts that this court erred in ruling that, in the involuntary bankruptcy proceeding against G. Harold King, the trustee is the proper

party to attack the sale of a 15.75 acre tract of property owned by the plaintiffs. Shirley G. Kings argues that it is error to rule that the trustee is the proper party to assert her rights in the property, because by an earlier ruling of this court she was ordered dismissed from the joint involuntary bankruptcy petition instituted against her and G. Harold King, *see* King v. Fidelity Nat'l Bank of Baton Rouge, 712 F. 2d 188, 191 (5th Cir. 1983), and therefore, the trustee is no longer the proper party to assert an interest in the property on her behalf.

Nothing in our original opinion, however, was intended to prevent Shirley G. King from asserting whatever rights she may have to the proceeds of the sale of the property. In ordering the sale of the property owned by the plaintiffs, the bankruptcy court provided that "any rights whether they have been asserted at this time or not in, to or in any way affecting the 15.75 acre tract are hereby reserved and transferred to the proceeds of this sale and any interest earned thereon." Thus, if indeed Shirley G. King had an assertable interest in the property and she is not otherwise precluded from asserting her interest, the bankruptcy court's order clearly provides that she can assert her interest in the proceeds of the sale.

With the exception of the above clarification of our earlier ruling, in all other respects the petition for rehearing is denied.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**No. 83-3344
Summary Calendar**

**In Re: G.HAROLD KING, JR. and
SHIRLEY G. KING,**

Bankrupts.

**G. HAROLD KING, JR. and
SHIRLEY G. KING,**

**Plaintiffs
Appellants,**

v.

**FIDELITY NATIONAL BANK and
CHARLES N. MALONE, Trustee,**

**Defendants
Appellees.**

**Appeal from the United States District Court for the
Middle District of Louisiana**

(OCTOBER 6, 1983)

**Before BROWN, TATE and HIGGINBOTHAM, Circuit
Judges.**

TATE, Circuit Judges:

**This appeal is one of several arising out of proceedings
initiated by the filing of an involuntary bankruptcy petition**

against G. Harold King.¹ On this appeal, several contentions are raised with regard to the validity of certain terms and conditions of the bankruptcy court's order that a tract of real estate owned by G. Harold King and Shirley G. King be sold. No attempt is made by G. Harold King to avoid the actual sale of the real estate. Finding the contentions to be without merit, we affirm.

Following the order adjudicating G. Harold King bankrupt, the trustee filed a notice of proposed sale of the property in question. The appellant King filed objections to the sale. The bankruptcy court overruled King's objections, and issued an order authorizing the sale of the property. The bankruptcy court's order was affirmed on appeal to the district court.

King's first contention is that the bankruptcy court abused its discretion in failing to reserve his right to attack the transaction by which he and Shirley G. King acquired the property in question from King Lumber Industries, Inc. The proper party to attack that sale, however, is the trustee, the designated representative of the estate in a bankruptcy proceeding. 11 U.S.C. § 323 (a). The bankruptcy court's order did effectively reserve the trustee's rights in the property, transferring those rights from the property to the proceeds of the sale. Accordingly, we find that this contention is without merit.

King also argues that the bankruptcy court abused its discretion in awarding a six percent commission to the listing realtors of the property. King contends that the trustee could have sold the property without the assistance of a real estate broker, thereby saving the estate the expense

¹The proceedings were commenced by the filing of a *joint* involuntary bankruptcy petition against G. Harold King and Shirley G. King. The petition against Shirley G. King, however, was dismissed during the pendency of this appeal. *King v. Fidelity Nat'l Bank of Baton Rouge*, ____ F.2d ____, ____, sl. op. 6581 (5th Cir. 1983). Consequently, only G. Harold King is before this court for purposes of this appeal.

of the realtor's commission. At the hearing on King's objection to the sale, however, the trustee stated that he had tried for months without success to sell the property. Moreover, the estate was incurring great expense in maintaining the property. The use of a realtor to facilitate sale of the property, therefore, was in the best interest of the estate.

King further argues that the bankruptcy court abused its discretion in awarding the realtor's commission because one of the realtors to receive a portion of the commission was the actual purchaser of the property. The realtor-purchaser, therefore, was to receive, in effect, a refund on the purchase price from the proceeds of the sale. Nevertheless, since the use of a realtor was necessary, the estate was going to pay the commission regardless of to whom the property was sold. Further, the purchase price approached what King contended was the actual value of the property. Under the circumstances, therefore, we do not find that the bankruptcy court abused its discretion in ordering payment of the realtor's commission.

King's last contention is that the bankruptcy court abused its discretion in reserving to Citizens Savings & Loan Association the right to claim attorney's fees out of the proceeds of the sale of the real estate. No award of attorney's fees was made by the bankruptcy court. King's contention, therefore, is premature and we decline to rule at this time on the propriety of an award of attorney's fees to Citizens Savings & Loan Association.

Conclusion

We affirm, finding as did the previous courts that King's contentions are without merit.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

MINUTE ENTRY:

MAY 11, 1983

PARKER, C.J.

IN RE

**Appeal of Bankruptcy
No. 81-329**

**G. HAROLD KING, JR., AND
SHIRLEY G. KING**

**CIVIL ACTION
No. 82-537-A**

This matter is before the court on a motion filed on behalf of the debtors for amendment of reconsideration of the court's judgment of March 30, 1983, affirming the judgment of the bankruptcy court. The bankruptcy order appealed from authorized the trustee to sell certain immovable property owned by the bankrupt estate. The bankrupts objected and the bankruptcy court overruled the objections. The issue presented on this motion for reconsideration relates to the fact that the bankruptcy court recognized the security interest of Citizen's Savings and Loan Association which held a first mortgage on the property authorized to be sold, authorized payment to Citizen's Savings and Loan Association and also relegated "any and all rights of Citizen's Savings and Loan Association to attorney's fees herein to the proceeds of the sale" of the immovable property. Appellants are apparently complaining that the Honorable Harvey H. Posner, retired bankruptcy judge, who is presently an unpaid retired annuitant in the process of completing a few bankruptcy matters which he had not completed at the time of his retirement, is a member of the law firm who represents Citizen's Savings and Loan Association. Appellants imply that the attorney's fees referred to "could ultimately be destined for a law firm with an Active Partner still handling

matters as a judicial officer for the bankruptcy court."

The record of this matter will disclose that Judge Posner has had absolutely nothing to do with it and that it has been handled completely and entirely by the Honorable A. Leon Hebert, the present bankruptcy judge. Moreover, no attorney's fees have been awarded; all the bankruptcy judge has done is to relegate the claim of Citizen's Savings and Loan Association for attorney's fees, if any be made, to the proceeds of the sales of the property. This issue, if indeed it is an issue, is premature and not ripe for an appeal.

Accordingly, the motion for amendment or reconsideration is hereby DENIED.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
OFFICE OF THE CLERK**

March 30, 1983

NOTICE OF JUDGMENT

G. HAROLD KING, JR., ET AL

CIVIL ACTION

VERSUS

NO. 82-537

FIDELITY NATIONAL BANK, ET AL

TAKE NOTICE that pursuant to Rule 77(d) of the Federal Rules of Civil Procedure, you are hereby notified of entry of judgment in the captioned matter as of this date.

C. LEE DUPUIS, CLERK

/s/ Mari J. Crouch

DEPUTY CLERK

**TO: Franz J. Baddock
David S. Rubin**

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

IN RE

CIVIL ACTION

HAROLD KING, JR. and
SHIRLEY G. KING

NO. 82-537-A

JUDGMENT

For the written reasons assigned and filed herein:
IT IS ORDERED ADJUDGED AND DECREED
that the Orders of the Bankruptcy court, dated May 14,
1982 and May 21, 1982 are hereby AFFIRMED.
Baton Rouge, Louisiana, March 30, 1983.

/s/ JOHN V. PARKER

CHIEF JUDGE
MIDDLE DISTRICT OF
LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE

CIVIL ACTION

HAROLD KING, JR. and
SHIRLEY G. KING

NO. 82-537-A

This case was initially filed under § 303 of the Bankruptcy Code. An order for relief under Chapter 7 of the Code was entered on November 12, 1981. On April 16, 1982, the trustee, Charles Malone, applied for an order of the Bankruptcy court approving the sale of certain immovable property belonging to the estate. The notice of sale, dated April 21, 1982, stated that the purchaser agreed to pay the sum of \$356,383.00, from which a realtor's fee of 6% was to be deducted. The notice also recognized the security interest of Citizens's Savings and Loan, which held a first mortgage on the property. The debtors filed written objections to the proposed sale. A hearing on those objections was held on May 13, 1982. The court, after testimony and argument by counsel, overruled the objections to the sale and authorized the trustee to sell the property. The terms and conditions of the sale are contained in the order of the Bankruptcy court dated May 14, 1982, and in the supplemental order of that court dated May 21, 1982. Both orders also make provisions for the disposition of the proceeds. The debtors now appeal because neither order made reference to then pending appeals by the debtors.

A Bankruptcy court may impose any conditions on the sale of estate property which are appropriate under the circumstances and the decision of the court will be given great deference due to the administrative element involved in such matters, see *Collier, Bankruptcy*, (14th Ed. 1976) §

70.98. The decision of the Bankruptcy court will not be set aside in the absence of abuse of discretion, *In Re Ken Boatman, Inc.*, 359 F.Supp. 1062 (D.C.La. 1973) aff'd 504 F.2d 924, *Collier, supra*, § 70.98. Careful analysis of the record and the law reveals that the Bankruptcy Judge has not abused his discretion.

Accordingly, the Orders of the Bankruptcy court, dated May 14, 1982 and May 21, 1982 are hereby AFFIRMED.

Baton Rouge, Louisiana, March 29, 1983.

/s/ John V. Parker

CHIEF JUDGE
MIDDLE DISTRICT OF
LOUISIANA

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA**

IN RE:

CASE NUMBER 81-00329

G. HAROLD KING, JR. AND
SHIRLEY G. KING
DEBTORS

SUPPLEMENTAL ORDER

IT APPEARING that on May 14, 1982, this Court signed an order in the above captioned matter, a copy of which is attached hereto and made a part hereof; and

IT FURTHER APPEARING that said order, ordered the closing notary to pay to Citizens Savings & Loan Association, all principal, interest and late charges as stated in its proof of claim filed herein in the amount of \$125,866.72 through April of 1982 plus any accrued interest and late charges through the date of sale, reserving to Citizens Savings & Loan Association any right it has to attorneys fees on its claim pursuant to its note and mortgage; but said order failed to order that any right that Citizens Savings & Loan Association has to attorneys fees be relegated to the proceeds of the sale of the 15.75 acre tract;

THEREFORE, IT IS ORDERED that this Court's order of May 14, 1982 be supplemented only insofar as to relegate any and all rights of Citizens Savings & Loan Association to attorneys fees herein to the proceeds of the sale of the 15.75 acre tract.

Baton Rouge, Louisiana, this 21st day of May, 1982.

/s/ A. LEON HEBERT,

BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA**

IN RE:

G. HAROLD KING, JR. AND
SHIRLEY G. KING,
DEBTORS

CASE
NUMBER 81-00329

ORDER

IT APPEARING that Charles N. Malone is the duly appointed and qualified trustee of the above referenced bankrupt estate; and

IT FURTHER APPEARING that part of the above referenced bankrupt estate is the following described immovable property: One (1) certain tract or parcel of ground, together with all the buildings and improvements thereon, situated in the Parish of Livingston, State of Louisiana, in SECTIONS TWENTY (20), TWENTY-ONE (21) and THIRTY-NINE (39), TOWNSHIP 7 SOUTH, RANGE 3 EAST, and designated on a map made by Dorian P. Heroman, P.E., dated October 14, 1974, a copy of which is annexed to an act of record in Book 194, folio 327 of the Conveyance Records of the Parish of Livingston, State of Louisiana, and containing approximately 15.75 acres, referred to herein as the "15.75 acre tract";

IT FURTHER APPEARING that Citizens Saving & Loan Association has a "first mortgage" affecting said property, which mortgage has an unpaid balance of both principal, interest, and late charges, through April of 1982 in the amount of \$125,866.72;

IT FURTHER APPEARING that the Fidelity National Bank of Baton Rouge claims to own a collateral mortgage dated March 6, 1980 securing a \$450,000.00 collateral mortgage note made by King Lumber Industries, Inc. and secures a debt in the amount of \$322,526.14, more

or less, plus interest, late charges and attorneys fees and which collateral mortgage the Fidelity National Bank of Baton Rouge alleges affects the aforementioned property;

IT FURTHER APPEARING that Charles N. Malone, trustee of the above captioned estate and Erwin A. LaRose trustee for King Lumber Industries, Inc., Case No. 81-00072 on the docket of this Court, allege that the aforementioned collateral mortgage in favor of Fidelity National Bank is void, is voidable, that the claim of Fidelity National Bank should be subordinated to other creditors and other positions, some but not all of which have been alleged in an adversary proceeding entitled Fidelity National Bank of Baton Rouge vs. Charles N. Malone, Trustee, Erwin A. LaRose, Trustee, Intervenor, being Adv. No. 81-0182 on the docket of this Court;

IT FURTHER APPEARING that Charles N. Malone, the trustee, filed an application for authority to sell the 15.75 acre tract, at private sale, without warranty of title on the part of the trustee, but with full substitution and subrogation to all rights and actions of warranty against all preceding owners and vendors, for the sum of \$356,383.00 to Thomas L. Sullivan, Jr., or to any other person who may offer a substantially higher price therefor under the terms and conditions of a purchase agreement which was attached to and made a part of the said trustee's application to sell; and

IT FURTHER APPEARING that, after due notice had been sent by mail to all parties in interest that, unless written objection was received in the office of the Clerk of the United States Bankruptcy Court by no later than May 3, 1982, the Court proposed to grant the application filed by said trustee;

IT FURTHER APPEARING that the debtors, G. Harold King, Jr. and Shirley G. King, through their counsel and Erwin A. LaRose, trustee of King Lumber Industries, Inc., through his counsel filed objections to the proposed sale;

IT FURTHER APPEARING that, a hearing was held on May 13, 1982 at 10:00 a.m. after notice had been given to all objecting parties on said objections filed by Erwin A. LaRose, trustee of King Lumber Industries, Inc. and G. Harold King, Jr. and Shirley G. King, debtors herein; present before the Court were Charles N. Malone, attorney at law on behalf of the bankrupt estate of G. Harold King, Jr. and Shirley G. King, debtors; Micheal T. Perry attorney at law on behalf of Erwin A. LaRose, trustee of the bankrupt estate of King Lumber Industries, Inc., David S. Rubin on behalf of Fidelity National Bank of Baton Rouge and Franz Joseph Baddock on behalf of G. Harold King, Jr. and Shirley G. King, debtors herein; after due consideration of the objections, the evidence presented, and arguments of counsel,

IT IS ORDERED that the objection of Erwin A. LaRose, trustee of the estate of King Lumber Industries, Inc. and the objection of G. Harold King, Jr. and Shirley G. King, debtors be, and they are hereby overruled;

IT IS FURTHER ORDERED that Charles N. Malone, trustee herein be, and he is hereby authorized to sell at private sale, without warranty of title on the part of the trustee, but full substitution and subrogation to all rights and actions of warranty against all preceding owners and vendors to Thomas L. Sullivan, Jr. for the sum of \$356,383.00, cash to be paid at the act of sale, all of the trustee's right, title and interest in and to the 15.75 acre tract;

IT IS FURTHER ORDERED that the closing notary shall pay to Citizens Savings & Loan Association, all principal, interest and late charges as stated in its proof of claim filed herein in the amount of \$125,866.72 through April of 1982 plus any accrued interest and late charges through the date of sale reserving to Citizens Savings & Loan Association any right it has to attorneys fees on its claim pursuant to its note and mortgage; but no attorneys fees are to be paid by the notary at the act of sale;

IT IS FURTHER ORDERED that Charles N. Malone, trustee herein shall pay no attorneys fees to Citizens Savings & Loan Association without an order of this Court and notice to G. Harold King, Shirley G. King, Fidelity National Bank of Baton Rouge and Erwin A. LaRose, trustee of the estate of King Lumber Industries, Inc.;

IT IS FURTHER ORDERED that the closing notary shall pay to J. Crowe & Associates, Inc., the listing realtors, a real estate commission in the amount of 6% of the \$356,383.00 sales price;

IT IS FURTHER ORDERED that the closing notary may deduct from the estate's portion of the purchase price and pay all ad valorem taxes for 1981 and prior affecting the 15.75 acre tract, if any; the buyer is responsible for all ad valorem taxes due for the year of 1982;

IT IS FURTHER ORDERED that the purchaser is responsible for all closing costs of the sale except those specifically referred to herein to the contrary

IT IS FURTHER ORDERED that the trustee herein is authorized to pay from the proceeds of the sale the following: to Fidelity National Bank the net sum paid by said bank for insurance insuring the 15.75 acre tract, the net sum is the gross amount paid by said bank less the return premiums to which said bank is entitled when the insurance is cancelled after the sale; to Varnado Plumbing Contractors, Inc., \$462.77 for labor and material repairing broken pipes due to January 1982 freeze; to A. N. R. Electric, \$45.00 for tying off wires and checking system; to Dixie Electric, \$120.00, deposit and service charge; to Sears, Roebuck & Co., \$49.77 service charge and repairs to two frozen water pumps, all pertaining to the 15.75 acre tract;

IT IS FURTHER ORDERED that after the payments ordered herein, the balance of the sales price is to be given to the trustee and by him deposited in the Fidelity National Bank of Baton Rouge, in an interest bearing account of certificate of deposit, until further order of this Court;

IT IS FURTHER ORDERED, ADJUDGED AND

DECREED that any and all rights of whatever nature or kind that the Fidelity National Bank has resulting from the collateral mortgage dated March 16, 1980 and any collateral mortgage note, pledge agreement and all other rights of Fidelity National Bank are transferred to the proceeds of this sale including all interest earned thereon;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this sale is made and all sums received by the trustee of this estate are so received with full reservation of all rights of Charles N. Malone, trustee of this estate, Erwin A. LaRose, trustee of King Lumber Industries, Inc., and Fidelity National Bank of Baton Rouge; any rights whether they have been asserted at this time or not in, to or in any way affecting the 15.75 acre tract are hereby reserved and transferred to the proceeds of this sale and any interest earned thereon;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk and the Recorder of Mortgages for the Parish of Livingston is hereby ordered to cancel and erase the inscription of the collateral mortgage by King Lumber Industries, Inc. in a document entitled "Collateral Mortgage" dated March 6, 1980 securing a collateral mortgage note in the amount of \$450,000 recorded in Mortgage Book 175, Page or Folio 300 of the records of the Clerk and recorder of the Parish of Livingston,

Baton Rouge, Louisiana, this 14th day of May, 1982.

/s/ A. LEON HEBERT

A. LEON HEBERT,
BANKRUPTCY JUDGE

cc: Mr. Charles N. Malone, Trustee
Mr. David S. Rubin, Attorney for
Fidelity National Bank of Baton Rouge

Mr. Erwin A. La Rose, Trustee of
King Lumber Industries, Inc.
Mr. Micheal T. Perry, attorney for
Erwin A. La Rose, Trustee
Mr. Franz Joseph Baddock, Attorney for
the Debtors

CLERK'S OFFICE

A TRUE COPY

MAY 14 1982

s. Dora A. Erlurt

Clerk, U.S. Bankruptcy Court

Middle District of Louisiana

Baton Rouge, La.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:

G. HAROLD KING, JR. AND
SHIRLEY G. KING
DEBTORS

CASE

NUMBER 81-00329

*APPLICATION FOR PRIVATE SALE OF
IMMOVABLE PROPERTY*

TO THE HONORABLE A. LEON HEBERT,
BANKRUPTCY JUDGE:

The application of Charles N. Malone, the duly appointed and qualified trustee herein, with respect represents that:

1.

The above captioned case was filed under the provisions of § 303 of the Bankruptcy Code seeking relief under Chapter 7 of the Bankruptcy Code on July 24, 1981. An order for relief under Chapter 7 of the Bankruptcy Code was entered on November 12, 1981.

2.

In due course, applicant was appointed Chapter 7 trustee and has now qualified and is acting as such.

3.

The estate for which applicant is trustee owns the described immovable property:

One certain tract or parcel of ground, together with all buildings and improvements thereon, containing approximately 15.75 acres, situated in the Parish of Livingston, State of Louisiana, in Sections Twenty (20), Twenty-One (21) and Thirty-Nine (39), Township 7 South, Range 3 East, and designated on a map made by Dorian P. Heroman, C.E., dated October 14, 1974, a

copy of which is annexed to an Act of record in Book 194, Folio 327 of the conveyance records of Livingston Parish, State of Louisiana.

4.

Applicant has received an offer to purchase said immovable property from Thomas L. Sullivan, Jr., 1295 Florida Boulevard, Denham Springs, Louisiana for the sum of \$356,383.00, cash to be paid at the act of sale. A copy of the purchase agreement offering to purchase said property is attached hereto and made a part hereof.

5.

The trustee will sell said property to this purchaser or to any other purchaser who may offer a substantially higher price therefore under the same terms and conditions. The sale will be without warranty on the part of the trustee.

6.

Said immovable property has been listed with Jay Crowe & Associates Realtors which real estate company has produced this prospective purchaser. Applicant proposes to pay a commission to said real estate company in the amount of 6% of the purchase price. This sum will be paid to that real estate agency at the act of sale.

7.

The purchaser is himself a real estate broker and will receive, from the listing agent, a portion, thought to be one-half of the commission paid.

8.

The Fidelity National Bank of Baton Rouge Claims to have a security interest affecting the immovable property sought to be sold herein. The validity of Fidelity National Bank's claimed security interest is disputed by applicant and the validity of said security interest is before this Court for a determination thereof. If the Fidelity National Bank's alleged security interest is valid against your applicant, then there may be no equity in said property for the estate.

9.

During the pendency of the determination of the

validity of Fidelity National Bank's security interest, the proceeds of this sale will be held, by the trustee, in an interest bearing account. Any security interest that Fidelity National Bank may have in said immovable property will be transferred to the proceeds of this sale.

10.

If Fidelity National Bank's alleged security interest is determined by this Court to be valid against the trustee, then the estate will retain reasonable administrative expenses for the estate, from the proceeds of the sale.

11.

There is a first mortgage affecting the property sought to be sold herein in favor of Citizens Savings & Loan Association of Baton Rouge having an unpaid principal balance in the amount of \$116,518.01, plus interest in the amount of \$8,683.52 from June 1, 1981 through April 14, 1982 plus interest from April 15, 1982 until paid at \$27.51 per day plus late charges in the amount of \$221.43 through May 19, 1982 plus reasonable attorneys fees as allowed by § 506 (b) of the Bankruptcy Code.

12.

After payment of the real estate commission and deduction or payment for the debt owed to Citizens Savings & Loans Association there should be no less than \$197,000.00 derived from the sale.

13.

Applicant feels that the sale of said immovable property under the foregoing terms and conditions is in the best interest of this estate and that the price offered therefore is the best one available.

WHEREFORE, applicant prays for the annexed order and for all relief as is equitable and just.

Respectfully submitted,
/s/ Charles N. Malone

Date: April 15, 1982 Charles N. Malone, Trustee
P.O. Box 3233
Baton Rouge, LA 70821

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA**

IN RE:

**G. HAROLD KING, JUNIOR, CASE NO. 81-00329
AND SHIRLEY G. KING,
DEBTORS**

**TRANSCRIPT OF THE ABOVE ENTITLED AND
NUMBERED HEARING ON OBJECTION OF
DEBTORS TO TRUSTEE'S PROPOSED SALE OF
IMMOVABLE PROPERTY AND ON OPPOSITION
OF TRUSTEE OF KING LUMBER INDUSTRIES,
INC., TO SALE. THIS HEARING WAS HELD
BEFORE THE HONORABLE A. LEON HEBERT,
UNITED STATES BANKRUPTCY JUDGE FOR THE
MIDDLE DISTRICT OF LOUISIANA ON MAY 13,
1982, AT 10:00 A.M.**

**REPORTED BY:
BARBARA D. PHIPPS
VERBATIM STENOGRAPH REPORTER**

CERTIFICATE OF SERVICE

I certify that although Fidelity National Bank is listed as a party defendant/appellee in the caption of this matter before the United States Court of Appeals for the Fifth Circuit, that said bank has assumed the position that "the sole proper appellee is the Trustee, who controls the estate of the Debtors. 11 USC 323..." and that for this reason the sole appellee herein is CHARLES N. MALONE, Trustee.

Accordingly, I certify under Rule 28.5, that I have this date, by prepaid mail, forwarded three (3) copies of the foregoing Appendix to Mr. CHARLES N. MALONE, Trustee, P.O. Box 3233, Baton Rouge, Louisiana 70821., and that all parties required to be served have been served under said Rule 28.5

Nevertheless, to apprise all entities that may have interest in this matter, I further certify that I have served an information copy of the same Appendix by pre-paid mail, on Mr. DAVID S. RUBIN, Attorney, P.O. Box 2997, Baton Rouge, Louisiana 70821, Mr. MICHEAL T. PERRY, Attorney, 5420 Corporate Blvd., Suite 302, Baton Rouge, Louisiana 70808, and on the CITIZENS SAVINGS AND LOAN ASSOCIATION, P.O. Box 1988, Baton Rouge, Louisiana 70821 - ATTN: Mr. MICHAEL A. ROY, Senior Vice President.

JAN 27 1984
BATON ROUGE, Louisiana, this January 27, 1984.

/s/ Franz Joseph Baddock

FRANZ JOSEPH BADDOCK